Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

MARLA P. HARDING,

Petitioner,

v.

MICHAEL S. HARDING,

Respondent.

On Petition For A Writ Of Certiorari To The State Of California Court Of Appeal, Second Appellate District, Division Four

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

The choice of law and jurisdictional provisions of the Full Faith and Credit For Support Orders Act (28 U.S.C. §1738B) bar a custodial parent residing in a state other than the one in which his or her divorce was obtained from seeking a modification of child support in the state in which such parent and children reside, unless the non-custodial parent agrees, in writing, to permit that state to take jurisdiction over child support obligations. The questions presented are:

1. Whether the choice of law and jurisdictional provisions of 28 U.S.C. §1738B, the Full Faith and Credit For Support Orders Act of 1994, is a valid exercise of Congress's power under the Commerce Clause of the Constitution.

2. Whether the choice of law and jurisdictional provisions of 28 U.S.C. §1738B are a valid exercise of Congress's power under the Full Faith and Credit Clause of the Constitution under the exceptions to the breadth of that Clause first enunciated by this Court in *Pacific Ins. Co. v. Comm'n.*, 306 U.S. 493, 502 (1939).

3. Whether the choice of law and jurisdictional provisions of 28 U.S.C. §1738B violate the Tenth Amendment to the United States Constitution by vesting jurisdiction and choice of law in a state that no longer has any compelling interest in the outcome of the proceedings.

4. Whether Sections 205 and 206 and and Section 611 of the Uniform Interstate Family Support Act (California Family Code sections 4909, 4910 and 4960, respectively), violate the Equal Protection Clause of the

ISSUES PRESENTED – Continued

Fourteenth Amendment of the United States Constitution, by creating a distinct class of parents and children residing in a state who are denied access to the courts and the benefit of the laws of their home State solely because the initial child support order in a marital dissolution proceeding was entered in a state other than the one in which they now reside.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	4
Reasons for Granting the Petition	13
A. Subsections (D) and (E) of the Full Faith and Credit for Child Support Orders Act Exceed Congress's Jurisdiction Under the Commerce Clause	13
B. Child Support Orders Are Not "Final" Judgments Within the Meaning of the Full Faith and Credit Clause, and the Jurisdictional and Choice Of Law Elements of the FFCSOA Violate the Tenth Amendment of the United States Constitution	18
C. Sections 205, 206 and 611 of the UIFSA Violate The Equal Protection Clause	22
Conclusion	26

TABLE OF AUTHORITIES

Page

CASES

FEDERAL

Alaska Packers Ass'n v. Comm'n, 294 U.S. 532 (1935).....7, 8, 18, 19

Bankers Life & Cas. Co. v. Crenshaw, 486 U.S. 71 (1988).....24

Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932).....21

Gregory v. Ashcroft, 501 U.S. 452 (1991).....21

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943).....7, 18

Milliken v. Bradley, 433 U.S. 267 (1977).....22

Milwaukee County v. White Co., 296 U.S. 268 (1935).....19

New York v. United States, 505 U.S. 144 (1992).....21

Nordlinger v. Hahn, 112 S.Ct. 2326 (1992).....24

Pacific Ins. Co. v. Comm'n, 306 U.S. 493 (1939).....*passim*

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985).....21

Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980).....7, 18

United States v. Lopez, 514 U.S. 549 (1995).....5, 14, 15, 16

United States v. Morrison, 529 U.S. 598 (2000).....5, 6, 15, 16

United States v. Robertson, 514 U.S. 669 (1995).....15

Vance v. Bradley, 440 U.S. 93 (1979).....24

TABLE OF AUTHORITIES – Continued

Page

STATE

Kilroy v. Superior Court (Winter), 54 Cal.App.4th 793 (1995) 5, 12, 21

Paton v. Brill, 663 N.E.2d 421 (1995) 5

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Article I, §8, Clause 3 ..... 2, 3, 17

United States Constitution, Article IV, §1 ..... 3, 18

United States Constitution, Tenth Amendment 3, 6, 19, 20, 21

United States Constitution, Fourteenth Amendment, §1 ..... 3, 10, 22, 25

28 U.S.C. §1738 18

28 U.S.C. §1738A 24

28 U.S.C. §1738A(c)-(f) 24

28 U.S.C. §1738B ..... *passim*

Uniform Interstate Family Support Act, §205 ..... 3, 8, 25

Uniform Interstate Family Support Act, §206 ..... 3, 8, 25

Uniform Interstate Family Support Act, §611 ..... 3, 8, 25

California Family Code §4053(k) 9

California Family Code §4053(*l*) 9

California Family Code §4909 ..... 2, 3, 4, 25

California Family Code §4910 ..... 2, 3, 4, 25

California Family Code §4960 ..... 2, 3, 4, 25

PETITION FOR WRIT OF CERTIORARI

Petitioner MARLA HARDING hereby respectfully prays that a Writ of Certiorari issue to the Court of Appeal of the State of California, Second Appellate District, Division Four, to review the judgment below.

OPINIONS BELOW

The Order and Findings After Hearing of the Superior Court of the State of California, County of Los Angeles's dismissing Petitioner's motion for modification of child support appears in the Appendix accompanying this Petition at 17-21. The published opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, the highest state court to review the merits, appears at App. 1-15 to the Petition, and is reported at 99 Cal.App.4th 626. The Court of Appeal's order denying a timely petition for rehearing is reproduced at App. 16, and the October 16, 2002 order of the Supreme Court of California denying the petition for review filed with that court is reproduced at App. 22.

JURISDICTION

The judgment of the Court of Appeal of California, Second Appellate District, was entered on June 21, 2002. The Court of Appeal denied a timely petition for rehearing on July 9, 2002. On October 16, 2002, the Supreme Court of California denied a petition for hearing. Jurisdiction of this Court is involved under 28 U.S.C. §1257(a).

Since the proceeding draws into question the constitutionality of the Full Faith and Credit For Support Orders Act of August 22, 1994, 108 Stat. 4064, as amended, 110 Stat. 2221, 111 Stat. 636, 28 U.S.C. §1738B, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. §2403(a) may be applicable.

No court of the United States as defined by 28 U.S.C. §451 has, pursuant to 28 U.S.C. §2403(a), certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question.

Since the proceeding draws into question the constitutionality of sections 4909, 4910 and 4960 of the California Family Code, an Act of the State of California affecting the public interest, and neither the State of California nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. §2403(b) may be applicable.

No court of the United States as defined by 28 U.S.C. §451 has, pursuant to 28 U.S.C. §2403(b), certified to the Attorney General of the State of California the fact that the constitutionality of such legislation has been drawn in question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, provides: "The Congress shall have Power * * * To regulate Commerce * * * among the several States."

2. The Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

3. The Tenth Amendment to the United States Constitution provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

4. Section One of the Fourteenth Amendment to the United States Constitution states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

5. The Full Faith and Credit for Support Orders Act, 28 U.S.C. §1738B, is reprinted in an appendix to this petition (App. 23-30.)

6. Article 2 (Sections 205 and 206) and and Article 6 (Section 611) of the Uniform Interstate Family Support Act is reprinted in an appendix to this petition (App. 31-34.)

7. California Family Code sections 4909, 4910 and 4960 are reprinted in an appendix to this petition (App. 35-38.)

STATEMENT OF THE CASE

This case involves the constitutionality of the jurisdiction and choice-of-law provisions of the Full Faith and Credit for Support Orders Act (FFCSOA), 28 U.S.C. §1738B, and the concomitant provisions of the Uniform Interstate Family Support Act (UIFSA), as those provisions as incorporated into the California Family Code (Family Code §§4909, 4910, and 4960), as well as the statutory structure of every other state in the nation.

Congress' stated intent in enacting the FFCSOA was to dissuade "noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States . . . " and attempt to alleviate the resulting "burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity." In addition, Congress stated that it was enacting the FFCSOA because of "the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payment levels that are based solely on the noncustodial parent's choice of residence . . . " (28 U.S.C. §1738B, Declaration and Findings; App. 29.) The instant case, however, presents a situation where the application of the statute thwarts the stated intent of the legislation, denies the custodial parent the right to have the laws of the state in which she and the children who are the beneficial recipients of any support order reside, and denies the state that has the greatest interest in insuring that an adequate support order is in place from either obtaining subject matter or personal jurisdiction, or even having any say in what an appropriate support order should be.

1. In *United States v. Lopez*, 514 U.S. 549 (1995), and again in *United States v. Morrison*, 529 U.S. 598 (2000), this Court struck down acts of Congress that sought to utilize its plenary power under the Commerce Clause to intervene in areas traditionally reserved for the states, and warned, *inter alia*, "Petitioners' reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in *Lopez*, be applied equally as well to *family law and other areas of traditional state regulation* since the aggregate effect over marriage, divorce, and childrearing on the national economy is undoubtedly significant." (529 U.S. at 614-616.)

It is indicative of how deep the jurisdictional overreach of the FFCSOA actually is that the question of the constitutionality of FFCSOA or the UIFSA has never come before courts of the Federal circuits, and, prior to the opinion published by the California Court of Appeal in this matter, had only been discussed by the Second Appellate District of the California Court of Appeal in *Kilroy v. Superior Court (Winter)*, 54 Cal.App.4th 793, 808-818 (1995), and the Sixth District Ohio Court of Appeal *Paton v. Brill*, 663 N.E.2d 421 (1995). Likewise, the FFCSOA has never been subjected to constitutional review by any state supreme court, or by this Court.

The Court of Appeal's opinion in the instant case relied on the *Kilroy* court's analysis that "[s]upport payments between parents in different states substantially affects interstate commerce. To begin with, such regular transfers of money between residents for purposes of supporting children in different states involves interstate commerce. . . . [¶] Further, we conclude child support payments is economic activity which substantially affects interstate commerce." This statement is in direct contrast

with this Court's holding in *Morrison* that even though "the aggregate effect over marriage, divorce, and childrearing on the national economy is undoubtedly significant," that does not ipso facto mean that this area of societal conduct is subject to regulation by Congress.

Moreover, Petitioner respectfully submits that there is a difference between a court-ordered support payment that crosses state lines, and dictating the venue and choice-of-law from which the order that engenders the payment can originate. The FFCSOA does both, and it is respectfully submitted that there is a crucial distinction between a child support payment, to the extent that it is a *res* that may or may not cross state lines in interstate commerce, and an order issued by a trial court to a parent to pay child support, which is a duty imposed by law and society on every parent irrespective of whether or not the payments engendered thereby will or will not cross a state line. As a result, Petitioner submits that the choice-of-law and jurisdictional aspects of the FFCSOA fall precisely into that area of regulation reserved to the states under the Tenth Amendment, and the Commerce Clause justification utilized by Congress in dictating which state had jurisdiction and choice-of-law in making a support modification was in excess of its authority and an intrusion into the sovereign rights of the several states to ensure that support payments received by citizens meet the guidelines for adequacy set forth by their individual laws.

The FFCSOA and UIFSA vest jurisdiction and choice-of-law in any proceeding to modify a child support order with any state that originally issues the order, irrespective of the state where the custodial parent and children who are the beneficiaries of such an order may be located at the time that a modification is sought. In doing so, the

FFCSOA and UIFSA treat a child support order as having the same "finality" as a civil money judgment, despite the fact that across the nation, child support orders are modifiable at any time in the state in which the child resides, prior to the time the child reaches his or her majority, except where the FFCSOA has barred such an action. In the circumstances of the instant case, the custodial parent and the children have resided for the past eight years in California, but the FFCSOA and UIFSA nonetheless require that the custodial parent go to Texas and apply there for a modification of the Respondent's support obligations, which are then determined under Texas law.

Leaving aside the differences (which are many and significant) between the law in California and Texas governing child support, it is the state where the custodial parent and children reside (i.e., California in the instant matter) that bears the burden of an inadequate support order, not Texas. In this respect, the FFCSOA and UIFSA stand full-square in conflict with a long line of decisions issued by this Court that have repeatedly recognized that, except in the case of a money judgment in a civil suit, " . . . there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy." (*Pacific Ins. Co. v. Comm'n.*, 306 U.S. 493, 502 [83 L.Ed. 940, 945, 59 S.Ct. 629] (1939); *Alaska Packers Ass'n v. Comm'n*, 294 U.S. 532, 546 [79 L.Ed. 1044, 1051-1052, 55 S.Ct. 518] (1935); *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 [88 L.Ed. 149, 154-155, 64 S.Ct. 208, 150 A.L.R. 413] (1943) [overruled on another ground in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 286 [65 L.Ed.2d 757, 776, 100

S.Ct. 2647] (1980), but applicable principle reaffirmed in dissent at p. 295 (65 L.Ed.2d at p. 782)].)

The FFCSOA and UIFSA, on the other hand, apply a "rigid and literal enforcement of the full faith and credit clause," without consideration of the applicable statutes or policies of the state where the custodial parent or children are located. This, it is respectfully submitted, "lead[s] to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own." (*Alaska Packers Ass'n v. Comm'n*, *supra*, 294 U.S. at p. 547 [79 L.Ed. at p. 1052].) "Full faith and credit does not . . . enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." (*Pacific Ins. Co. v. Comm'n*, *supra*, 306 U.S. at pp. 504-505 [83 L.Ed.2d at p. 946].) Unfortunately, that is precisely the effect that the FFCSOA and UIFSA have in the circumstances found in the instant matter, and which effect every custodial parent that has chosen to relocate out of the state in which the support order was originally issued.

2. Sections 205 and 206 and Section 611 of the Uniform Interstate Family Support Act (UIFSA), cedes a State's jurisdiction to modify any child support order that was originally issued by a court of another state to the issuing state, without regard to the positions of the parties, or the length of time that has elapsed since the original order was entered, or differences in the laws and guidelines governing child support that exist between the various states.

Under these statutes, a custodial parent receiving child support under a support order issued by another

state is barred from seeking a modification of that order in the state where they live. In the instant case, that means that even though the Petitioner and her children have been residents and citizens of California for almost four times the amount of time they lived in Texas, it is, nonetheless, a suburban county in Texas that retains jurisdiction over the amount of support that is appropriate for two children who have resided for the past eight (8) years in Los Angeles County, California, and this determination would also be made pursuant to Texas law, not the law of the jurisdiction in which the custodial parent and the children receiving the support live.

The Legislatures of each of the several states have declared in their schemes dealing with child support that the guidelines set forth therein are, for example, "intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula." (See, e.g., California Fam. Code §4053(k).) In that same statute, the California Legislature also stated that it is this State's policy that "[c]hild support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states." (Cal. Fam. Code §4053(*l*).)

Congress' stated intent in enacting the FFCSOA was to dissuade "noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States . . . " and attempt to alleviate the resulting "burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity." In addition, Congress stated that it was enacting the

FFCSOA because of "the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payment levels that are based solely on the noncustodial parent's choice of residence . . . " (28 U.S.C. §1738B, Declaration and Findings; emphasis added.)

Because of the high degree of mobility amongst the population, it stands to reason that there are a significant number of custodial parents and their children who received a divorce decree in another State. Under the provisions of UIFSA, however, these individuals, along with their minor charges, are denied (i) the rights enjoyed by any other custodial parent and child residing in their home State to receive child support in accord with the guidelines mandated by that State's Legislature, and (ii) barred from seeking redress for inadequate child support in the courts of the State where they reside, without regard to the sometimes vast difference between one state's standard of living or child support guidelines as opposed to the support guidelines and standard of living in the state where the decree was originally issued. Instead, a custodial parent subject to the provisions of the UIFSA is required to seek any modification of the noncustodial parent's support obligations in the "originating" state, under that state's support guidelines and laws relating thereto, which can be vastly different and impose different legal and equitable standards of proof or "need" on the parent seeking the modification.

It is respectfully submitted that this creates a prima facie violation of these parents' and their children's equal protection and due process rights under the Fourteenth Amendment.

3. Petitioner and the Respondent were married in California in 1989. The Respondent is a member of senior management with a large multinational corporation headquartered in St. Louis, Missouri, and in 1990, was transferred from California to New Jersey, where the parties' two children were born. In 1992, the Respondent was again transferred, this time from New Jersey to Houston, Texas. The relations between the Petitioner and Respondent had deteriorated over time, and in 1994, they were divorced. Under the Texas Dissolution Decree, Respondent pays $1,800 a month in child support for the two minor children, who were then aged 5 and 2, respectively. The children are now aged 13 and 10. Other than the instant case, no proceedings to modify the Texas support order were ever conducted.

In 1996, the Petitioner, along with the two children subject to the support order, moved to California (her original home, and where the parties were originally married) in 1996, and they have resided in California since that time.

Between 1992 and 1998, Respondent was based in Houston. In 1998, he was again promoted, and transferred to the corporate headquarters in St. Louis, at which time he purchased a three-bedroom condominium which he continues to own, and where he resides when in St. Louis, which is approximately two-thirds of the time he is not on the road. The Respondent continues to claim domicile in the State of Texas, where he also maintains a home.

4. On July 19, 2000, Petitioner filed a Statement for Registration of Foreign Support Order and Clerk's Notice pursuant to the provisions of the UIFSA and relevant provisions of the California Family Code, and on August

23, 2000, filed a Notice of Motion and Motion for Simplified Modification of Order for Child Support. Respondent was personally served with process in St. Louis on or about October 5, 2000. All attempts to serve Respondent with process in the State of Texas were unsuccessful.

On October 5, 2000, Respondent filed a motion to quash Petitioner's modification motion on grounds that the proceeding was barred by 28 U.S.C. §1738B. Thereafter, the parties conducted discovery, and on April 12, 2001, a hearing was held on the combined motions, and the matter was taken under submission. On April 17, 2001, the trial court issued its order denying Respondent's motion to quash with respect to one of the minor children, and granting the motion with respect to the other. Both parties moved for a new trial on various issues.

On May 12, 2001, the trial court heard the parties' respective motions for new trial, vacated its previous ruling, and entered a new ruling granting Respondent's motion to quash in full. On June 7, 2001, Petitioner filed a timely Notice of Appeal.

On June 21, 2002, Division Four of the California Court of Appeal, Second Appellate District, in a published opinion affirmed the ruling of the trial court. In its opinion, the Court of Appeal relied heavily upon the constitutional analysis in *Kilroy v. Superior Court (Winter)*, 54 Cal.App.4th 793, 808-818 (1995), and asserted it was "on point," notwithstanding substantial factual distinctions between the instant matter and the facts in that case.

Petitioner filed a timely Petition for Rehearing, which was summarily denied on July 9, 2002. Petitioner filed a

timely Petition for Review before the Supreme Court of California, which was denied on October 16, 2002.

REASONS FOR GRANTING THE PETITION

A. Subsections (D) and (E) of the Full Faith and Credit for Child Support Orders Act Exceed Congress's Jurisdiction Under the Commerce Clause

Article I, Section 8, Clause 3 of the United States Constitution grants to the Congress the authority "[t]o regulate commerce . . . among the several states . . . " In enacting the FFSOA, Congress based its jurisdiction to assert federal jurisdiction over the payment, modification and enforcement of child support orders on the finding that

> ""(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries –
>
> "(A) encourage *noncustodial* parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, *resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a* ***burden on custodial parents*** *that is expensive, time consuming, and disruptive of occupations and commercial activity*;
>
> "(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to *inequities*

> *in child support payments levels that are based solely on the* ***noncustodial*** *parent's choice of residence.*" (Emphasis added.)

These findings constitute essentially an argument that the "cumulative burden" of interstate child support payments constitutes a burden on interstate commerce sufficient to justify Congressional action. There is a significant distinction to be made between Congress' regulation of a child support payment that passes over state lines, which is a "thing" in interstate commerce and its condition precedent, that being the "order" that creates the necessity for the payment in the first instance.

In *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), this Court articulated "three broad categories of activity that Congress may regulate under its commerce power[:] First, Congress may regulate the use of the channels of interstate commerce. This category includes "an attempt to prohibit the interstate transportation of a commodity through the channels of commerce." Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress may regulate "those activities having a substantial relation to interstate commerce."

Petitioner respectfully submits that an order that formalizes a parent's legal duty to make child support payments cannot come within the ambit of any of the three categories set forth in *Lopez*.

The issuance of a child support order is, in effect, a formalization of a parent's duty to provide economic support for his or her child, and is traditionally an area of concern

reserved to the states. As such, as this Court has noted, it is questionable whether or not it qualifies at all for Congressional supervision, since it is not arguably "an intrastate commercial activity that has interstate effects." (*United States v. Robertson*, 514 U.S. 669, 671 (1995).)

The only way a child support payment can constitute a "thing" in interstate commerce is if the obligor and the person receiving the support come to reside in different states, but a child support order is not an "instrumentality" of interstate commerce, because there is no causal nexus between the order and the question of whether or not such a payment may ultimately cross one or more state lines because of a change in residence by one of the parties. Stated another way, in order to be subject to Congress' plenary powers under the Commerce Clause, it must be found that a child support order itself would constitute "[an] activity having a substantial relation to interstate commerce" that would fall within the third category of matters that this Court has determined to be within Congress' authority. (*Lopez*, 514 U.S. at 558-559)

In 2000, the Commerce Clause analysis reasoning set forth in *Lopez* was *reiterated* by this Court in the case of *United States v. Morrison*, 529 U.S. 598 (2000). In that case, this Court reaffirmed its rejection of a "but-for" reasoning that would allow Congress to "regulate" any activity whatsoever, and elaborated on the Court's determination to limit Congress' ability to intervene in areas traditionally reserved for the states, holding, *inter alia*:

> "[If this line of reasoning were upheld] Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the[se]

> theories . . . it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate." (*Morrison*, 529 U.S. at 614, citing *Lopez*, 514 U.S. at 564.)
>
> * * *
>
> "Petitioners' reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in *Lopez*, be applied equally as well to *family law and other areas of traditional state regulation* since the aggregate effect over marriage, divorce, and childrearing on the national economy is undoubtedly significant." (529 U.S. at 614-616; emphasis added.)

In the findings made in connection with the enactment of 28 U.S.C. §1738B, Congress *did not* find any "independent" effect that child support payments have upon interstate commerce. Rather, Congress found that the indirect "**burden on *custodial* parents**" imposed by the effort taken in litigating interstate support cases was "*expensive, time consuming, and disruptive of occupations and commercial activity*." This reasoning is *precisely* the type of Congressional overreach this Court disapproved of in *Lopez* and *Morrison*.

The payment of child support by a parent is not an act of "commerce." It is, rather, a societal *duty* imposed by *law*, *public interest* and *moral obligation*. In modern American society, divorced parents often find themselves in different jurisdictions. Unquestionably, the payment of child support obligations creates problems that burden custodial

parents and the judicial system. This, however, does not transmute the payment of child support into a "commercial" transaction: the *beneficial recipient* of a child support payment is *the child of the person making the payment.*

As such, even if Congress can arguably regulate certain issues with respect to an individual obligor's payment of support when those payments are made on an *inter-* rather than *intra*-state basis, Petitioner respectfully submits that the authority granted to Congress under the Constitution to regulate the interstate transfer of funds required by such orders does *not* grant Congress the *de facto* right to dictate to the courts of the several states *which of these several states has the power to modify a pre-existing support order* under its Commerce Clause powers. The making of a support order does not effect interstate commerce to any greater degree than that any other judicial order imposing a financial requirement of some kind on an individual living outside a given jurisdiction. To hold otherwise would effectively grant Congress the right to dictate jurisdiction and choice of law to the several states with respect to *any* civil litigation where one or more of the participants is located outside of a given jurisdiction.

As such, in enacting the jurisdictional and choice of law provisions contained in 28 U.S.C. §1738B, Congress was acting in excess of the authority given to it to regulate "interstate commerce" under Article I, Section 8, Clause 3 of the United States Constitution, and the statute is an unconstitutional exercise of federal authority.

B. Child Support Orders Are Not "Final" Judgments Within the Meaning of the Full Faith and Credit Clause, and the Jurisdictional and Choice Of Law Elements of the FFCSOA Violate the Tenth Amendment of the United States Constitution

Article IV, section 1, of the United States Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Title 28 of the United States Code Annotated at section 1738 provides that the acts, records and judicial proceedings of any court in the United States shall have the ***same*** *full faith and credit* in the courts of every other state *as they have in the state from which they are taken.*

This Court is the final arbiter of the proper reach of this clause and of the various exceptions thereto. (*Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 [88 L.Ed. 149, 154-155, 64 S.Ct. 208, 150 A.L.R. 413] (1943)), and has repeatedly recognized that, *except in the case of a money judgment* in a civil suit, " . . . there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state *in contravention of its own statutes or policy*." (*Pacific Ins. Co. v. Comm'n,* 306 U.S. 493, 502 [83 L.Ed. 940, 945, 59 S.Ct. 629] (1939), italics added; *Alaska Packers Ass'n v. Comm'n*, 294 U.S. 532, 546 [79 L.Ed. 1044, 1051-1052, 55 S.Ct. 518] (1935); *Magnolia Petroleum Co. v. Hunt*, *supra*, 320 U.S. at p. 438 [88 L.Ed. at pp. 154-155] [overruled on another ground in *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 286 [65 L.Ed.2d 757, 776,

100 S.Ct. 2647] (1980), but applicable principle reaffirmed in dissent at p. 295 (65 L.Ed.2d at p. 782).)

This public policy exception "is implied from the nature of our dual system of government, and recognizes that consistent with the full faith and credit clause there may be limits to the extent to which the policy of one state, in many respects sovereign, may be subordinated to the policy of another." (*Milwaukee County v. White Co.*, 296 U.S. 268, 273 [80 L.Ed. 220, 225-226, 56 S.Ct. 229] (1935).) Were there to be a "rigid and literal enforcement of the full faith and credit clause," without consideration of the applicable statutes or policies of the forum state, it "would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, *but cannot be in its own*." (*Alaska Packers Ass'n v. Comm'n*, *supra*, 294 U.S. at p. 547 [79 L.Ed. at p. 1052]; emphasis added.) This conflict "does not . . . enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." (*Pacific Ins. Co. v. Comm'n*, *supra*, 306 U.S. at pp. 504-505 [83 L.Ed.2d at p. 946].)

Likewise, Amendment X to the United States Constitution states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Petitioner in this matter, a custodial parent, is a native Californian who has resided here for all of her life except for eight of the years she was married to Respondent. She moved back to California with the two minor children in 1996, and has resided here with her two

children since that time, who are also citizens of this State.

It is California which has the compelling interest in jurisdiction over these proceedings. Michael and Morgan are citizens of the State of California, not Texas. The fact that the divorce decree was originally entered six and one-half years ago in Texas is irrelevant to the question of what the proper level of support Respondent should be paying for support of the children who reside in California. Texas has no interest whatsoever in this proceeding, except for the fact that Congress has dictated that Texas is where the Petitioner is required to go if she wishes to modify the original support order. The California Legislature, on the other hand, has issued child support guidelines that are significantly different from those in effect in Texas. For Congress to dictate to California that (a) Texas has sole jurisdiction over this matter in an issue it has no present interest in, and (b) that the "appropriate" level of support for children living in this state must be determined by *Texas* law is a violation of California's sovereign rights under the Tenth Amendment, discriminates against the children whose support is being provided for, and leaves a citizen without a forum where she can obtain relief under the laws of the state in which she and her children reside.

Clearly, the enactment of guidelines for child support for children who reside in the State of California constitutes "'a subject matter concerning which [California] is competent to legislate.'" (*Pacific Ins. Co.*, *supra*, 306 U.S. at p. 501 [59 S.Ct. at p. 632, 83 L.Ed. at p. 944].) It is "the expression of [California's] domestic policy, in terms declared to be exclusive in its application to persons and

events within the state." (*Pacific Ins. Co., supra*, 306 U.S. at pp. 502-503 [59 S.Ct. at p. 633, 83 L.Ed. at p. 945].)

California's "significant contact" with Petitioner and her children, all of whom are California residents, creates a "'state interest[ ], such that choice of its law is neither arbitrary nor fundamentally unfair.'" (*Phillips Petroleum Co. v. Shutts* 472 U.S. 797, 818-819 [105 S.Ct. 2965, 2978, 86 L.Ed.2d 628, 646 (1985).)

Moreover, California's abdication of jurisdiction in favor of Texas in the instant circumstances would be "obnoxious to the public policy of the forum." (*Bradford Electric Light Co. v. Clapper* 286 U.S. 145 [52 S.Ct. 571, 76 L.Ed. 1026, 82 A.L.R. 696] (1932).) There can be few more significant public policies of any state than that of protecting the health and welfare of its minor citizens by ensuring that a parent with ample means is meeting his statutory *duty* to support his children pursuant to the guidelines set forth by the Legislature.

In its opinion in this matter, the Court of Appeal relied almost exclusively for its Tenth Amendment analysis undertaken in 1995 by the California Court of Appeal's opinion in *Kilroy*, which included a string-cite of 28 cases from this Court upholding federal enactments in the face of Tenth Amendment objections, as opposed to only two cases where a Tenth Amendment objection had been sustained. (*New York v. United States*, 505 U.S. 144, 155-188 [112 S.Ct. 2408, 120 L.Ed.2d 120] (1992), and *Gregory v. Ashcroft*, 501 U.S. 452, 469-470 [111 S.Ct. 2395, 115 L.Ed.2d 410] (1991) .) The flaw in the Court of Appeal's analysis in *Kilroy*, however, was that with only one exception, all of the cases it cited involved circumstances where a Tenth Amendment challenge had been made against a

uniform federal standard that Congress had imposed upon *all of the states*, thereby invoking the federal government's rights under the Supremacy Clause. The sole exception, *Milliken v. Bradley* 433 U.S. 267, 291 [97 S.Ct. 2749, 53 L.Ed.2d 745](1977), dealt with the right of a federal court to order a tax levy to pay for a desegregation program mandated by the Fourteenth Amendment.

However, the FFCSOA does *not* impose a "uniform federal standard" on the states. Rather, it simply imposes a rule that whatever *state* happens to be first to issue a child support in a dissolution action has sole jurisdiction, without regard to the interests of any *other states*. As a result, there is no "uniform federal standard" involved here – indeed, there is no *federal standard involved whatsoever* – and as a result, it is respectfully submitted that the Supremacy Clause never comes into play with respect to the FFCSOA *at all*. Indeed, it is quite the contrary, since any attempt to impose a uniform child support guideline on all of the 50 states would be patently unconstitutional, and would never survive judicial scrutiny.

As a result, it is respectfully submitted, that both the jurisdictional and choice-of-law provisions contained in the FFCSOA are an unconstitutional violation of the Tenth Amendment to the United States Constitution, and review of this matter is warranted.

C. Sections 205, 206 and 611 of the UIFSA Violate The Equal Protection Clause

Section One of the Fourteenth Amendment to the United States Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Under those portions of the UIFSA and the California Family Code that vest jurisdiction over child support modifications with the first state to issue a child support order rather than the state in which they reside, any person in the position of the Petitioner and her children are deprived of their rights as citizens of their home state and the equal protection and application of the laws of that state, in favor of a sister state jurisdiction that has *no interest* in the ultimate outcome of the support modification proceedings.

The bizarre effect that the relevant provisions of the FFCSOA and the UIFSA have is not only clearly demonstrated by the present situation, it is also shown by an opposite hypothetical: Under the relevant provisions of these statutes, if neither party remains in the state where the order was originally issued, a custodial parent living in a "low" support state (such as, for example, Mississippi) would be able to seek a modification in a "high" support state (such as California or New York) against a non-custodial parent residing in that jurisdiction, receive a support order based on the applicable support guideline for the jurisdiction of the non-custodial parent, and thus receive a support award much higher than what would be awarded were the non-custodial parent a resident of the

state where the children and custodial parent actually resided.

The Equal Protection Clause is intended to keep governmental decision makers from treating persons differently who are, in all relevant respects, alike. (*Nordlinger v. Hahn* 112 S.Ct. 2326, 505 U.S. 1, 120 L.Ed.2d 1 (1992).) "Any 'arbitrary and irrational discrimination violates the Equal Protection Clause" of the Fourteenth Amendment under even the 'most deferential standard of review." (*Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 83, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988).) If "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes [a court can] only conclude that the legislature's actions were irrational," a statute is unconstitutional under the Equal Protection Clause. (*Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979).)

The arbitrary nature of the jurisdictional and choice-of-law elements of §1738B and the UIFSA are magnified when these provisions are compared to its companion statute, 28 U.S.C. §1738A, which vests disputes over *custody and visitation* with *either* the state where the custody order was originally issued, or permits that state to cede jurisdiction to the state where the children are currently residing. (*See* 28 U.S.C. §1738A(c)-(f).)

Likewise, while the Congressional findings made at the time of the passage of 28 U.S.C. §1738B state that the purpose of the legislation was to *protect* the interests of children who are the recipients of support orders from the problems caused by "*inequities in child support payments*

levels that are based solely on the ***noncustodial*** *parent's choice of residence."*

In the instant circumstances where the custodial parent and children no longer reside in the state in which the original support order was entered, the "written consent" of the noncustodial parent required for the child's home state to take jurisdiction over support matters, without regard to the length of time that has elapsed since the entry of the original order, or any discrepancies that may exist between the laws of the originating state and the home state, allows the noncustodial parent to block the very purpose for which the law was enacted. As a result, it is respectfully submitted that the imposition of this "written consent" requirement, along the permanent vesting of jurisdiction in the state initially issuing the order irrespective of the current residence of the supported child, or the length of time that has elapsed since the entry of the original order, is exactly the type of "arbitrary, irrational" action on the part of the legislature that renders sections 205, 206 and 611 of the UIFSA, and its progeny in the California Family Code (e.g., §§4909, 4910, and 4960), constitutes an unconstitutional denial of the equal protection provisions of the Fourteenth Amendment, and review of this legislation is appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

MARLA HARDING, Plaintiff and Appellant, v. MICHAEL S. HARDING, Defendant and Respondent.	B151542 (Super Ct. No. SD017652) (Filed Jun. 21, 2002)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge, Affirmed.

Barry P. King for Plaintiff and Appellant.

Trope & Trope and Thomas Paine Dunlap for Defendant and Respondent.

The trial court dismissed Marla Harding's order to show cause for modification of a Texas child support order because it lacked subject matter jurisdiction pursuant to the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 United States Code section 1738B, and the complimentary state statute, the California equivalent, the California Uniform Interstate Family Support Act (Fam. Code, §§ 4900, et seq.) She argues that the FFCCSOA and the state law are unconstitutional because they infringe upon what is traditionally a local issue. She also argues there is insufficient evidence that respondent remains a Texas resident for either law to apply and preclude the court from having jurisdiction. We

conclude there is no constitutional infirmity and that sufficient evidence supports the trial court determination that respondent is a Texas resident. We accordingly affirm.

FACTS

Appellant and respondent were divorced in Texas in 1994 and appellant was awarded child support for the parties' two children. Appellant and the children later moved to California. Respondent claimed his residence remained in Texas, although he also has a residence in Missouri, his place of employment.

On July 19, 2000, appellant filed a Statement for Registration of Foreign Support Order in the Los Angeles County Superior Court. In her declaration in support of the statement, appellant declared that respondent's last known residence was in Texas. In August 2000, appellant filed a motion for modification of child support.

On October 5, respondent moved "TO QUASH AND STRIKE PETITIONER'S MOTION FOR MODIFICATION OF CHILD SUPPORT . . . " with the notation that he was making a "SPECIAL APPEARANCE." In support of the motion, respondent declared in writing, "I have been a resident of Texas continuously since 1991. I am registered to vote in Texas, I own a car in Texas, my car is registered in Texas, I own a home in Texas, I pay property taxes in Texas, and have not had a primary residence other than in Texas since I moved to Texas from New Jersey in 1991. All of my child and spousal support obligations have been timely paid through a Texas Wage Assignment Order." Respondent further declared that aside from his children's and his former spouse's presence in California, respondent

has no connections with California. In addition, respondent declared that he has a teenage daughter from a prior marriage who has lived with him in Texas for approximately six years, he has a fiancee who lives in Texas with him, and all evidence of his income and expenses, as well as his ability to pay support, is in Texas or at the Missouri headquarters of his employer.

He also filed a declaration from Tina Mueller, his employer's Senior Relocation Coordinator. The declaration states that the employer provided "relocation services" to employees transferred to jobs increasing their commutes by 50 miles, and the term "relocation" refers to an employee's relocation to a different or new position with the employer. Mueller declared that respondent's employer's records reflect that his address is in Texas, and that respondent used the company relocation services to buy a condominium in Missouri "for his use while in Missouri. Respondent did not utilize Relocation Services to sell his residence in Texas."

On October 20, 2000, respondent filed a response to appellant's original motion to modify and termed it a "special appearance." He checked off the portion of the form stating he did not consent to the order requested, and wrote, "The Court does not have jurisdiction to modify the Texas Order."

On November 7, the trial court granted appellant's request to conduct discovery on the issue of respondent's place of residence.

Respondent also propounded discovery but limited it to the issue of his residence which was the key determination in connection with the issue of jurisdiction.

On April 17, 2001, the trial court determined that respondent resides in Texas, and not Missouri, as contended by appellant. The court found that respondent "did not make a general appearance in this matter. All responsive papers filed on behalf of the Respondent are marked 'special appearance'. There is no authority to support Petitioner's contention that the propounding of discovery about the jurisdictional issues in this case will constitute a general appearance." Because the court found that the parties' older child was conceived in California, the court found sufficient contact between respondent and the state to confer personal jurisdiction over respondent. The court concluded that it therefore "may exercise jurisdiction to modify the child support order issued by the State of Texas only as to the child who was conceived in this state." The court then set the matter for a status conference for the purpose of setting a hearing on appellant's motion to modify support.

Respondent filed a notice of intention to move for a new trial and/or to vacate the trial court's April 17 order.

On May 17, 2001, after hearing argument on the motion for new trial, the trial court reversed itself. It concluded that respondent is a Texas resident registered to vote in Texas, has a Texas driver's license, owns a car which is registered in Texas, pays property taxes in Texas, has a teenager from a prior marriage who lives with him in Texas, has a fiancee who lives with him in Texas and has an EZ Tag account in Texas. It also noted that respondent's child and spousal support obligations were paid through a Texas wage assignment order, and respondent's payroll and bank statements and many of his credit card statements were sent to respondent's Texas address. It concluded that "the above-referenced facts sufficiently

support Respondent's contention that he lives in Texas, notwithstanding that he spends time outside of the State of Texas, owns property in Missouri, and has an office in Missouri." Based on these findings, it concluded it lacked subject matter jurisdiction under 28 United States Code section 1738B and under the California Family Code sections 4960 et seq. It entered an order granting respondent's motion for a new trial, vacated the portion of its April 17, 2001 order finding that the court had subject matter jurisdiction to modify the parties' Texas child support order, and dismissed appellant's motion to modify child support.

DISCUSSION

The main issue here is the constitutionality of the FFCCSOA, which we now address.

Subdivision (a)(2) of 28 United States Code section 1738B sets forth the general rule that each state shall enforce other states' child support orders, and "shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i)."

Subdivision (e) of section 1738 B authorizes a state court to modify another state's child support order if "(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and [¶] (2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or [¶] (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the

order and assume continuing, exclusive jurisdiction over the order."

Subdivision (f), as applicable, provides: "(1) If only 1 court has issued a child support order, the order of that court must be recognized."

Subdivision (i) provides: "If there is no individual contestant or child residing in the issuing State, the party . . . seeking to modify . . . a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification."

Also relevant is subdivision (d) of section 1738B which concerns continuing jurisdiction. This subdivision states: "A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is . . . *the residence* of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has a made a modification of the order." (Italics added.)

As appellant notes, Congress declared in 1994 that it was enacting section 1738B to deal with the lack of uniformity of child support laws from different states. Appellant quotes an excerpt from the congressional findings that the nonuniform laws, among other things, encouraged noncustodial parents to relocate from the states where the original support orders were made placing a burden on interstate travel and communication and the custodial parent which is "time consuming, and disruptive of occupations and commercial activity" and results in "inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence." Appellant argues that the FFCCSOA does not consider the

contingency here, where the minor children and custodial parent move from the state where the child support order was originally issued and contends that "[w]isdom, therefore, dictates that consideration of these matters should be *local* rather than national; and, indeed, the *more* local . . . the better." Appellant further maintains that the FFCCSOA's "failure . . . to distinguish between the different circumstances that arise when the *obligor* and the *obligee* leave the state where the order was originally entered" "*creates* such a manifest injustice that it cannot withstand constitutional scrutiny."

Acknowledging that the constitutionality of the FFCCSOA was upheld in *Kilroy v. Superior Court* (1997) 54 Cal.App.4th 793 and *Paton v. Brill* (Ohio App. 10th Dist. 995) 104 Ohio App.3d 826, 663 N.E.2d 421, appellant argues these cases should not be followed in light of the more recent decision of *United States v. Morrison* (2000) 529 U.S. 598.

Relying on *United States v. Lopez* (1995) 514 U.S. 549, *Morrison, supra,* upheld a federal appellate court judgment striking down a federal statute as unconstitutional. (529 U.S. at pp. 601-602.) In *Morrison* a female student at Virginia Polytechnic Institute sued two male students in federal district court, alleging that their assault and repeated rape of her violated 42 United States Code section 13981, part of the Violence Against Women Act of 1994. (*Id.* at pp. 604-605.) The district court dismissed the female student's complaint on the ground that Congress lacked authority to enact section 13981 under either the Commerce Clause of the United States Constitution or section 5 of the Fourteenth Amendment. (*Ibid.*) The Court of Appeals upheld the district court's conclusion that

Congress lacked constitutional authority to enact the civil remedy of section 13981. (*Id.* at p. 605.)

The United States Supreme Court explained that "we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." (*United States v. Morrison, supra,* 529 U.S. at p. 607.) The Court adopted the following holding from *Lopez:* " 'Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.' [Citation.]" (*Id.* at p. 610.) "*Lopez's* review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor." (*Id.* at p. 611.) Accordingly, since gender-motivated crimes of violence "are not, in any sense of the phrase, economic activity," section 13981 was not justified under the commerce clause. (*Id.* at p. 613.)

The *Morrison* court further held that the statute at issue there could not be considered a constitutional exercise of Congress's remedial power under section 5 of the Fourteenth Amendment. (*United States v. Morrison, supra,* 529 U.S. at p. 627.) It explained that section 5 authorizes Congress to "enforce" by "appropriate legislation" the constitutional guarantee against state deprivation of a person's "life, liberty, or property, without due process of law" and against the denial of a person's "equal protection of the laws." (*Id.* at p. 619.) The Court pointed out that section 13981 "is not aimed at proscribing discrimination by officials which the Fourteenth Amendment might not itself proscribe; it is directed not at any State or state actor, but at individuals who have committed

criminal acts motivated by gender bias." (*Id.* at p. 626.) Accordingly, "Congress' power under § 5 does not extend to the enactment of § 13981." (*Id.* at p. 627.)

Lopez, supra, held that Congress exceeded its authority to regulate commerce in enacting the Gun-Free School Zones Act of 1990, 18 United States Code section 922, subdivision (q)(1)(A). This statute "made it a federal offense 'for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.' [Citation.] The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce." (*United States v. Lopez, supra,* 514 U.S. at p. 551.) "Section 922(q) is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce." (*Id.* at p. 561, fn. omitted.)

Unlike the FFCCSOA, the federal law at issue in *Morrison* concerns a gender-motivated crime between people in the same state, and thus clearly does not involve commerce across state lines. In contrast, the FFCCSOA concerns child support payments ordered in one state and sent to another state; therefore, by its very nature it concerns a regulated activity which substantially affects interstate commerce.

We agree with respondent that *Kilroy, supra,* is on point. The respondent there sought to restrain the California trial court from proceeding with a hearing on an order to show cause concerning a potential modification of a Georgia child support decree. (*Kilroy v. Superior Court, supra,* 54 Cal.App.4th at p. 797.) The appellate court agreed with the respondent that the trial court lacked jurisdiction to modify the out-of-state support order because of the FFCCSOA. (*Ibid.*) The respondent's former spouse, who sought to modify the child support order in California, argued that the FFCCSOA is unconstitutional "because it cannot be sustained as a congressional regulation of interstate commerce and it is an improper federal command to state government." (*Id.* at p. 808.) In contrast to the facts in *Lopez, supra,* the *Kilroy* court held that "[s]upport payments between parents in different states substantially affects interstate commerce. To begin with, such regular transfers of money between residents for purposes of supporting children in different states involves *interstate* commerce. . . . [¶] Further, we conclude child support payments is economic activity which *substantially* affects interstate commerce." (*Id.* at p. 809, italics in original.) "In enacting the Full Faith and Credit for Child Support Act, the Congress found that the lack of uniformity caused the following impacts: noncustodial parents were thereby encouraged to move to another state; the movement of noncustodial parents increased interstate travel and communication that was necessary to secure enforcement of child support orders; the increased time and expenses involved in securing enforcement of support orders were disruptive of occupations and commercial activity; the movement of noncustodial parents to a new state has resulted in massive arrearages nationwide; there was an ongoing avoidance of child support obligations by

noncustodial parents; there was the resulting excessive relitigation of child support orders; the excessive relitigation resulted in conflicting orders, confusion, a waste of judicial resources, and loss of public confidence in the courts; the deprivation of liberty and property without due process of law; and burdens on commerce among the states. [Citation.]" (*Id.* at p. 811, fn. omitted.)

Like appellant, the ex-wife in *Kilroy* argued that the FFCCSOA violates the Tenth Amendment of the United States Constitution. (*Kilroy v. Superior Court, supra,* 54 Cal.App.4th at p. 813.) "The Tenth Amendment of the United States Constitution states, 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' At the outset, we note that the United States Supreme Court has only invalidated federal laws because they are invasive of reserved state powers on the rarest of occasions." (*Id.* at p. 813.) "[U]nder the supremacy clause . . . , insofar as the Full Faith and Credit for Child Support Orders Act requires California to give deference to the Georgia order, there is no violation of the Tenth Amendment. This we conclude is particularly true given the fact that the authority to adopt general laws which enforce full faith and credit of state court judgments is a specified power of the Congress." (*Id.* at p. 816.) "Because the limitation on state court jurisdiction is clear, the supremacy clause permitted the Congress to adopt the Full Faith and Credit for Child Support Orders Act. This is so even though 28 United States Code section 1738B preempts state court jurisdiction to modify interstate child support orders." (*Id.* at pp. 818-819.) We agree with this analysis, and accordingly reject appellant's

challenge of the FFCCSOA premised on the Tenth Amendment.

We next consider appellant's argument that section 1738B violates her and the children's rights under the United States Constitution's equal protection clause. As she correctly notes, section 1 of the Fourteenth Amendment to the United States Constitution states: "No *State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any *State* deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (Italics added.) The equal protection clause by its very language is limited to states; there is no equal protection clause applicable to the federal government. (8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 592, p. 43.)

Appellant argues that section 1738B's "progeny in the California Family Code (e.g., §§ 4909, 4911, and 4960)" is also unconstitutional, tying the constitutional challenges together in her opening brief. In addition, appellant raises the issue of whether California Family Code section 4909, subdivision (d)[1] violates the equal protection clause issue. But she does not brief this issue, in violation of California Rules of Court, rule 14(a)(1)(B). "When a brief fails to contain a legal argument with citation of authorities on the points made, we may 'treat any claimed error in the

[1] Family Code section 4909, subdivision (d) states: "A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter."

decision of the court sustaining the demurrer as waived or abandoned.' [Citation.]" (*Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 948.)

Having concluded that the FFCCSOA passes constitutional muster, we now review its application to the instant case. Respondent argues that Texas retains exclusive jurisdiction pursuant to section 1738B, subdivision (d) because Texas is still "the residence of" respondent. Appellant contends that respondent's residence is in Missouri. We review this issue pursuant to the substantial evidence standard. Accordingly, all conflicts in evidence are resolved in favor of the prevailing party, and all legitimate and reasonable inferences are indulged to uphold the trial court's decision. (*In re Marriage of Okum* (1987) 195 Cal.App.3d 176, 181-182.)

Government Code section 244 provides: "In determining the place of residence the following rules shall be observed: [¶] (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose." Further, "[t]here can only be one residence" and "[t]he residence can be changed only by the union of act and intent." (Gov.Code, § 244, subds.(b), (f).)

The overwhelming evidence in the record shows that respondent does not consider Missouri his state of residence, but always thinks of Texas as his residence. The trial court found that Texas is respondent's residence. A review of the entire record supports this finding. The fact that respondent is registered to vote in Texas is indicative of Texas residency as are his employer's records which list Texas as respondent's home address, even though respondent used the employer's relocation services to purchase a

condominium near his office in Missouri. Respondent's eldest daughter lives with him in Texas as does his fiancee and he returns to Texas on weekends and vacations. It is clearly his place "of repose." Consequently, pursuant to subdivision (d) of section 1738B, Texas, as the state which issued the original child support order, had continuing, exclusive jurisdiction over the order.

We also conclude the trial court was correct in determining it lacked subject matter jurisdiction under California Family Code section 4960. That statute states in pertinent part: "(a) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if Section 4962 does not apply and after notice and hearing it finds that: [¶] (1) The following requirements are met: [¶] (i) The child, the individual obligee, and the obligor do not reside in the issuing state. [¶] (ii) A petitioner who is a nonresident of this state seeks modification. [¶] (iii) The respondent is subject to the personal jurisdiction of the tribunal of this state."

The evidence is unequivocal that appellant, the party petitioning for modification of the Texas child support order, is a resident of California, and thus does not fall within subdivision (a)(1)(ii) of Family Code section 4960. Moreover, as we have previously determined, there is substantial evidence that respondent, the obligor, resides in Texas, the issuing state. Therefore, the requirement of subdivision (a)(1)(i) is not met.

Appellant argues respondent waived the lack of jurisdiction by making a general appearance through participating in discovery. In support of this argument, appellant relies heavily on *Creed v. Schultz* (1983) 148

Cal.App.3d 733. But the concept of general appearance attaches to the issue of personal jurisdiction over respondent, not subject matter jurisdiction. Even were we to conclude the concept is relevant, the record unambiguously demonstrates, contrary to the showing made in *Creed,* that the discovery engaged in by respondent related solely to the issue of respondent's residence, the crucial factor in determining whether or not jurisdiction would attach. This does not constitute a general appearance. (*366-386 Geary St., L.P. v. Superior Court* (1990) 219 Cal.App.3d 1186, 1193-1194; *Islamic Republic of Iran v. Shams Pahlavi* (1984) 160 Cal.App.3d 620, 623, 628.)

DISPOSITION

The dismissal order is affirmed. Costs on appeal are awarded to respondent.

CERTIFIED FOR PULICATION

HASTINGS, J.

We concur:

EPSTEIN, Acting P.J.,

CURRY, J.

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 4

July 9, 2002

Marla Harding
v.
Michael S. Harding

B151542
Los Angeles County No. SD017652

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of Petitioner: MARLA P. HARDING and Respondent: MICHAEL S. HARDING	CASE NO. SD 017 652 ORDER AND FINDINGS AFTER HEARING (Filed May 17, 2001) DATE: May 8, 2001 TIME: 8:30 A.M. DEPT: "F"

Respondent, MICHAEL S. HARDING'S, Motion for a New Trial and/or to Vacate Order and Enter New Order (filed April 25, 2001), and Petitioner, MARLA HARDING'S, Motion for New Trial and to Vacate Portions of April 17, 2001 Order (filed on or about April 25, 2001), came for hearing on May 8, 2001. Barry P. King, Esq. of the Law Offices of Barry P. King, appeared on behalf of Petitioner, Marla Harding, who was present in Court and Mark S. Patt, Esq. and Susannah J. Braffman, Esq. of Trope and Trope specially appeared on behalf of Respondent, Michael S. Harding. The above-referenced Motions arose from Petitioner's Motion for Modification of Child

Support (filed August 23, 2000) and Respondent's Motion to Quash and Strike Petitioner's Motion for Modification of Child Support and Quash or Limit Her Subpoena to Anheuser-Busch (filed October 5, 2001), and the Court's April 17, 2001 Order relating thereto.

After consideration of all of the pleadings on file and the arguments of counsel, the Court orders and finds as follows:

1. Respondent's Motion for a New Trial and/or to Vacate Order and Enter New Order (filed April 25, 2001) is GRANTED. The Court shall vacate that portion of its April 17, 2001 order that found that the Court had subject matter jurisdiction to modify the parties' Texas child support order.

2. Petitioner, MARLA HARDING'S, Motion for New Trial and to Vacate Portions of April 17, 2001 Order is DENIED.

3. Petitioner, MARLA HARDING'S, Motion to Modify Child Support (filed August 23, 2001) is dismissed with prejudice due to lack of subject matter jurisdiction.

4. All outstanding subpoenas and other discovery are quashed, including but not limited to, Petitioner's Subpoena to Anhesuer-Busch, Inc., dated September 8, 2000; Petitioner's Subpoena to Wells Fargo Bank NA, dated January 9, 2000; and Petitioner's Subpoena to Wells Fargo Bank dated March 9, 2001.

5. The foregoing Orders are based on the following:

A. The Court finds that Respondent is a Texas resident based on the facts set forth in the Declarations

respondent has previously submitted to the Court. Such facts include but are not limited to the following:

1. Respondent is registered to vote in Texas;

2. Respondent owns a car that is registered in Texas;

3. Respondent pays property taxes in Texas;

4. Respondent's child support and spousal support obligations have been paid through a Texas wage assignment order;

5. Respondent's teenaged daughter from a prior marriage resides with him in Texas;

6. Respondent's fiancee resides with him in Texas;

7. Respondent has a Texas drivers's license;

8. Many of Respondent's credit card statements are sent to him in Texas;

9. Respondent's payroll statements are sent to him in Texas;

10. Respondent's bank statements are sent to him in Texas;

11. Respondent has an EZ Tag account in Texas.

12. The Court finds that the above-referenced facts sufficiently support Respondent's contention that he lives in Texas, notwithstanding that he spends time outside of the State of Texas, owns property in Missouri, and has an office in Missouri.

B. Petitioner is a resident of the State of California.

C. Pursuant to 28 U.S.C. 1738B, the Court lacks subject matter jurisdiction to modify the parties' Texas child support order, given the Court's finding that Respondent is residing in Texas.

D. Pursuant to Family Code Section 4960(a)(1), the Court lacks subject matter jurisdiction to modify the parties' Texas child support order based on the Court's finding that Respondent resides in Texas and that Petitioner is not a nonresident of California.

E. Family Code Section 4962 is not applicable to the instant action because Respondent does not reside in California, as required by Family Code Section 4962(a). Family Code Section 4962(b) does not confer subject matter jurisdiction to modify the Texas Order to California, as Section 4962(b) addresses only the issue of personal jurisdiction, if there is subject matter jurisdiction pursuant to Section 4962(a).

F. Family Code Section 4909 is not applicable to this case because it only addresses circumstances in which a California Court has issued a child support order, which is not the case in the instant action.

G. The Court does not have subject matter jurisdiction to modify the parties' Texas child support order based on any other portion of Family Code Section 4900 *et seq.*

APPROVED AS TO FORM AND CONTENT

Dated: _____ /s/ Barry P. King
BARRY P. KING,
Attorney for Petitioner,
Marla P. Harding

IT IS SO ORDERED.

Dated: May 17, 2001 /s/ GERALD ROSENBERG
THE HONORABLE
RICHARD NEIDORF
JUDGE OF THE
SUPERIOR COURT

Court of Appeal, Second Appellate District,
Division Four – No. B151542
S108851

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARLA HARDING, Plaintiff and Appellant,

v.

MICHAEL S. HARDING, Defendant and Respondent.

(Filed Oct. 16, 2002)

Petition for review DENIED.

GEORGE, C.J.
Chief Justice

28 USCS § 1738B. Full faith and credit for child support orders

(a) General rule. The appropriate authorities of each State –

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions. In this section:

"child" means –

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"child's State" means the State in which a child resides.

"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance,

child care, and educational expenses) for the support of a child.

"child support order" –

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes –

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

"contestant" means –

(A) a person (including a parent) who –

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of child support orders. A child support order made by a court of a State is made consistently with this section if –

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g) –

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing jurisdiction. A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority to modify orders. A court of a State may modify a child support order issued by a court of another State if –

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of child support orders. If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive

jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of modified orders. A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of law. (1) In general. In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order. In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for modification. If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State

with jurisdiction over the nonmovant for the purpose of modification.

(Added Oct. 20, 1994, P. L. 103-383, § 3(a), 108 Stat. 4064; Aug. 22, 1996, P. L. 104-193, Title III, Subtitle C, § 322, 110 Stat. 2221; Aug. 5, 1997, P. L. 105-33, Title V, Subtitle F, Ch 3, § 5554, 111 Stat. 636.)

Other provisions:

Congressional findings, statement of policy, and declaration of purposes. Act Oct. 20, 1994, P. L. 103-383, § 2, 108 Stat. 4063, provides:

"(a) Findings. The Congress finds that –

> "(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;
>
> "(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;
>
> "(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries –
>
> > "(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

"(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;

"(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

"(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

"(E) lead to the excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law; and

"(4) among the results of the conditions described in this subsection are –

"(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

"(B) the deprivation of rights of liberty and property without due process of law;

"(C) burdens on commerce among the States; and

"(D) harm to the welfare of children and their parents and other custodians.

"(b) Statement of policy. In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

"(c) Purposes. The purposes of this act [this section and this note] are –

> "(1) to facilitate the enforcement of child support orders among the States;
>
> "(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and
>
> "(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders."

UNIFORM INTERSTATE FAMILY SUPPORT ACT

* * *

§ 205. Continuing, Exclusive Jurisdiction. –

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until each individual party has filed written consent with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this [Act].

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this [Act], a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this [Act].

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

---

§ 206. Enforcement and Modification of Support Order by Tribunal Having Continuing Jurisdiction. –

(a) A tribunal of this State may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this State having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of

the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another state and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

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§ 611. Modification of Child Support Order of Another State. –

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if, after notice and hearing, it finds that:

(1) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a [petitioner] who is a nonresident of this State seeks modification; and

(iii) the [respondent] is subject to the personal jurisdiction of the tribunal of this State; or

(2) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that

a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

(e) Within [30] days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.

Cal. Family Code 4909.

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Cal. Family Code 4910.

(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply Section 4930 to receive evidence from another state and Section 4932 to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Cal. Family Code 4960.

(a) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if Section 4962 does not apply and after notice and hearing it finds that:

(1) The following requirements are met:

(i) The child, the individual obligee, and the obligor do not reside in the issuing state.

(ii) A petitioner who is a nonresident of this state seeks modification.

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedure substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not

required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and shall be so recognized under Section 4911 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.